



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2010 REGULAR SESSION

HOUSE BILL NO. 188

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The following bill was reported to the Senate from the House and ordered to be printed.

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TREY GRAYSON
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY

BY T. Grayson

AN ACT relating to trusts and estates.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

1 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO
2 READ AS FOLLOWS:

3 *An interest created in real or personal property shall not be void by reason of any rule*
4 *against perpetuities, whether the common law rule or otherwise. The common law rule*
5 *against perpetuities shall not be in force in this Commonwealth.*

6 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO
7 READ AS FOLLOWS:

8 *(1) (a) A future interest or trust is void if it suspends the power of alienation for*
9 *longer than the permissible period. The power of alienation is the power to*
10 *convey to another an absolute fee in possession of land, or full ownership of*
11 *personalty. The permissible period is within twenty-one (21) years after the*
12 *death of an individual or individuals then alive.*

13 *(b) If the settlor of an inter vivos trust has an unlimited power to revoke, the*
14 *permissible period is computed from the termination of that power.*

15 *(c) If a future property interest or trust is created by exercise of a power of*
16 *appointment, the permissible period is computed from the time the power is*
17 *exercised if the power is a general power exercisable in favor of the donee,*
18 *the donee's estate, the donee's creditors, or the creditor's of the donee's*
19 *estate, whether or not it is exercisable in favor of others, and even if the*
20 *general power is exercisable only by will; in the case of other powers, the*
21 *permissible period is computed from the time the power is created but facts*
22 *at the time the power is exercised are considered in determining whether the*
23 *power of alienation is suspended beyond the death of an individual or*
24 *individuals alive at the time of creation of the power plus twenty-one (21)*
25 *years.*

- 1 (2) The power of alienation is suspended when there are no persons who, alone or in
 2 combination with others, can convey an absolute fee in possession of land, or full
 3 ownership of personalty.
- 4 (3) There is no suspension of the power of alienation by a trust or by equitable
 5 interests under a trust if the trustee has power to sell, either expressed or implied,
 6 or if there is a power to terminate the trust by distributing the property subject to
 7 the trust to the beneficiaries in fee simple in one (1) or more persons then living.
- 8 (4) This section does not apply to limit any of the following:
- 9 (a) Transfers, outright or in trust, for charitable purposes;
- 10 (b) Transfers to one (1) or more charitable organizations as described in 26
 11 U.S.C. secs. 170(c), 2055(a), and 2522(a), or any similar statute;
- 12 (c) A future interest or a power of appointment arising out of a nondonative
 13 transfer, except a nonvested property interest or a power of appointment
 14 arising out of:
- 15 1. A premarital or post-marital agreement;
- 16 2. A separation or divorce settlement;
- 17 3. An arrangement similar to subparagraph 1. or 2. of this paragraph
 18 arising out of a prospective, existing, or previous marital relationship
 19 between the parties;
- 20 4. A contract to make or revoke a will or trust;
- 21 5. A contract to exercise or not to exercise a power of appointment;
- 22 6. A transfer in satisfaction of a duty of support; or
- 23 7. A reciprocal transfer;
- 24 (d) A transfer to a trust or other property arrangement forming part of a
 25 pension, profit-sharing, stock bonus, health, disability, death benefit,
 26 income deferral, or other current or deferred benefit plan for one (1) or
 27 more employees, independent contractors, or their beneficiaries or spouses,

to which contributions are made for the purposes of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income, or principal in the trust or other property arrangement; or

(e) A property interest, power of appointment, or arrangement that was not subject to the common law rule against perpetuities or is excluded by another statute of this Commonwealth.

→ SECTION 3. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

(1) Except as provided in subsection (2) of this section, Sections 1 and 2 of this Act shall apply to:

(a) A future property interest or a power of appointment that is created on or after the effective date of this Act, including a property interest or power of appointment created pursuant to the exercise of a power of appointment under an instrument executed prior to the effective date of this Act; or

(b) A future property interest or a power of appointment:

1. That is created pursuant to the laws of any state that does not have a rule against perpetuities in force;

2. That is not covered by any previously existing rule against perpetuities; and

3. To which, after the effective date of this Act, the laws of this state are made applicable by transfer of the situs of a trust to Kentucky, by a change in the law governing a trust instrument to Kentucky law, or otherwise.

(2) With respect to a nonvested property interest or a power of appointment created either before or after the effective date of this Act, which is determined in a judicial proceeding commenced on or after the effective date of this Act to violate Kentucky's rule against perpetuities as that rule existed at the time the interest or

power was created, a court upon the petition of an interested person may reform the disposition in the manner that most closely approximates the transferor's manifested plan of disposition and is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

(3) For purposes of this section only, a future property interest or a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

(4) An instrument which contains a provision requiring the vesting of all interests created by the instrument within the period provided by the common law rule against perpetuities shall be construed as requiring the interests to vest within the period specified by this section and Sections 1 and 2 of this Act, unless the provision is determined by a court to have been included in the instrument for reasons other than protecting the interest against a violation of the common law rule against perpetuities. For purposes of this subsection, the term "common law rule against perpetuities" shall include KRS 381.215, 381.216, and 381.217 prior to their repeal on the effective date of this Act.

➔ Section 4. KRS 386.185 is amended to read as follows:

- (1) If a trustee or personal representative holds and controls an amount, exclusive of income, of fifty thousand dollars (\$50,000)~~twenty-five thousand dollars (\$25,000)}~~ or less or the will directs that such an amount be placed in a trust, the fiduciary may petition the District Court having jurisdiction of the trust or estate, for an order authorizing the fiduciary to distribute the amount held, plus income available, less fees chargeable, to the appropriate beneficiary or beneficiaries, legal representatives thereof, or other appropriate persons or institutions responsible for the object of the trust, who shall be under a duty to use the funds for the purposes of the trust. Upon receipt of said petition by the District Court, and accompanying

1 affidavit and/or oral testimony, the court shall order the amount distributed.

2 (2) When an order to distribute the amount petitioned is granted and entered into the
3 court's records, no bond shall be required of the recipient of said distribution from
4 the trustee or personal representative.

5 (3) A release of the trustee or personal representative shall be executed by the recipient
6 upon distribution of the amount held, declaring said fiduciary not liable thereafter.
7 The trustee or personal representative shall not be required to look into the
8 application of the amount so distributed.

9 ➔ Section 5. KRS 386.450 is amended to read as follows:

10 **As used in KRS 386.450 to 386.504:**

11 (1) "Accounting period" means a calendar year unless another twelve (12) month period
12 is selected by a fiduciary. The term includes a portion of a calendar year or other
13 twelve (12) month period that begins when an income interest begins or ends when
14 an income interest ends;

15 (2) "Beneficiary" includes, in the case of a decedent's estate, an heir, legatee, and
16 devisee and, in the case of a trust, an income beneficiary and a remainder
17 beneficiary;

18 (3) "District Court approval" means the consent of the District Court having
19 jurisdiction over the fiduciary, with notice of the request for approval being
20 given to all current beneficiaries and all reasonably ascertainable remainder
21 beneficiaries in the oldest generation[-

22 (a) ~~All current beneficiaries;~~

23 (b) ~~All remainder beneficiaries in the oldest generation; and~~

24 (c) ~~The court~~];

25 (4) "Fiduciary" means a personal representative or a trustee. The term includes an
26 executor, administrator, successor personal representative, and public administrator;

27 (5) "Income" means money or property that a fiduciary receives as current return from a

1 principal asset. The term includes a portion of receipts from a sale, exchange, or
 2 liquidation of a principal asset, to the extent provided in Articles 4 and 5 of the
 3 Kentucky Principal and Income Act;

4 (6) "Income beneficiary" means a person to whom net income of a trust is or may be
 5 payable;

6 (7) "Income interest" means the right of an income beneficiary to receive all or part of
 7 net income, whether the terms of the trust require it to be distributed or authorize it
 8 to be distributed in the trustee's discretion;

9 (8) "Mandatory income interest" means the right of an income beneficiary to receive net
 10 income that the terms of the trust require the fiduciary to distribute;

11 (9) "Net income" means the total receipts allocated to income during an accounting
 12 period minus the disbursements made from income during the period, plus or minus
 13 transfers under KRS 386.450 to 386.504 to or from income during the period;

14 (10) **"Notice" means written notice of the time and place for a hearing on the request**
 15 **for District Court approval that is placed postage prepaid in the United States**
 16 **mail at least thirty (30) days prior to the hearing and addressed to the last known**
 17 **address of the party to receive notice, and may be proved by an affidavit of the**
 18 **fiduciary or fiduciary's counsel filed at the hearing stating the name and address**
 19 **to which notice was mailed postage prepaid and the date of the mailing;**

20 **(11)** "Principal" means property held in trust for distribution to a remainder beneficiary
 21 when the trust terminates;

22 **(12) [(11)]** "Remainder beneficiary" means a person entitled to receive principal when an
 23 income interest ends;

24 **(13) [(12)]** "Terms of a trust" means the manifestation of the intent of a settlor or
 25 decedent with respect to the trust, expressed in a manner that admits of its proof in a
 26 judicial proceeding, whether by written or spoken words or by conduct; and

27 **(14) [(13)]** "Trustee" includes an original, additional, or successor trustee, whether or not

1 appointed or confirmed by a court.

2 ➔Section 6. KRS 386.454 is amended to read as follows:

3 (1) Notwithstanding any provision of Kentucky law to the contrary, the trustee of a trust
4 to which by law KRS 286.3-277 does not apply may elect to have such provisions
5 apply to the administration of the trust with approval of the District Court.

6 (2) A trustee may adjust between principal and income to the extent the trustee
7 considers necessary if KRS 286.3-277 applies by law or by election made and
8 approved under subsection (1) of this section, the terms of the trust describe the
9 amount that may or shall be distributed to a beneficiary by referring to the trust's
10 income, the trustee determines, after applying the rules in KRS 386.452(1), that the
11 trustee is unable to comply with KRS 386.452(2) and the adjustment, including an
12 adjustment method such as an annual percentage distribution if the percentage is not
13 less than three percent (3%) nor more than five percent (5%) of the fair market
14 value of the trust assets determined annually, is approved by the District Court.

15 (3) A personal representative may adjust between principal and income in the same
16 manner as a trustee if KRS 286.3-277 applies to the personal representative by law
17 or if the personal representative elects to have KRS 286.3-277 apply to the
18 administration of the estate, upon approval of the District Court, which approval
19 may be an adjustment method such as an annual percentage distribution if the
20 percentage is not less than three percent (3%) nor more than five percent (5%) of
21 the fair market value of the trust assets determined annually, and:

22 (a) The amount distributable to a beneficiary of the estate is determined by
23 reference to the income of the estate; and

24 (b) The personal representative determines, and after applying the rules of KRS
25 386.452(1), that the personal representative is unable to comply with KRS
26 386.452(2).

27 (4) *In deciding whether and to what extent to exercise the power conferred by*

1 subsection (2) or (3) of this section, a fiduciary shall consider all factors relevant
 2 to the trust or estate and its beneficiaries, including the following factors to the
 3 extent they are relevant:

4 (a) The nature, purpose, and expected duration of the trust or estate;

5 (b) The intent of the settlor or testator;

6 (c) The identity and circumstances of the beneficiaries;

7 (d) The needs for liquidity, regularity of income, and preservation and
 8 appreciation of capital;

9 (e) The assets held in trust or estate and:

10 1. The extent to which those assets consist of financial assets, interests in
 11 closely held enterprises, tangible and intangible personal property, or
 12 real property;

13 2. The extent to which an asset is used by a beneficiary; and

14 3. Whether an asset was purchased by the fiduciary or received from the
 15 settlor or testator;

16 (f) The net amount allocated to income under the other sections of KRS
 17 386.450 to 386.504 and the increase or decrease in the value of the principal
 18 assets, which the fiduciary may estimate as to assets for which market
 19 values are not readily available;

20 (g) Whether and to what extent the terms of the trust or will give the fiduciary
 21 the power to invade principal or accumulate income or prohibit the
 22 fiduciary from invading principal or accumulating income, and the extent
 23 to which the fiduciary has exercised a power from time to time to invade
 24 principal or accumulate income;

25 (h) The actual and anticipated effect of economic conditions on principal and
 26 income and effects of inflation and deflation; and

27 (i) The anticipated tax consequences of an adjustment.

1 (5) A fiduciary shall not make an adjustment:

- 2 (a) That diminishes the income interest in a trust that requires all of the income to
 3 be paid at least annually to a spouse and for which an estate tax or gift tax
 4 marital deduction would be allowed, in whole or in part, if the fiduciary did
 5 not have the power to make the adjustment;
- 6 (b) That reduces the actuarial value of the income interest in a trust to which a
 7 person transfers property with the intent to qualify for a gift tax exclusion;
- 8 (c) That changes the amount payable to a beneficiary as a fixed annuity or a fixed
 9 fraction of the value of the trust assets;
- 10 (d) From any amount that is permanently set aside for charitable purposes under a
 11 will or the terms of a trust unless both income and principal are so set aside;
- 12 (e) If possessing or exercising the power to make an adjustment causes an
 13 individual to be treated as the owner of all or part of the trust or estate for
 14 income tax purposes, and the individual would not be treated as the owner if
 15 the fiduciary did not possess the power to make an adjustment;
- 16 (f) If possessing or exercising the power to make an adjustment causes all or part
 17 of the trust or estate assets to be included for estate tax purposes in the estate
 18 of an individual who has the power to remove a fiduciary, appoint a fiduciary,
 19 or both, and the assets would not be included in the estate of the individual if
 20 the fiduciary did not possess the power to make an adjustment;
- 21 (g) If the fiduciary is a beneficiary of the trust or estate; or
- 22 (h) If the fiduciary is not a beneficiary, but the adjustment would benefit the
 23 fiduciary directly or indirectly; except that any effect on the fiduciary's
 24 compensation shall not preclude an adjustment so long as the fiduciary's fees
 25 are reasonable and otherwise comply with the applicable law.

26 ~~(6) [(5)]~~ If paragraph (e), (f), (g), or (h) of subsection ~~(5) [(4)]~~ of this section applies to
 27 a fiduciary and there is more than one (1) fiduciary, a cofiduciary to whom the

1 provision shall not apply may make the adjustment unless the exercise of the power
2 by the remaining fiduciary or fiduciaries is not permitted by the terms of the trust.

3 ~~(7)(6)~~ A fiduciary may release the entire power conferred by subsection (2) or (3) of
4 this section or may release only the power to adjust from income to principal or the
5 power to adjust from principal to income if the fiduciary is uncertain about whether
6 possessing or exercising the power will cause a result described in paragraphs (a) to
7 (f) of subsection ~~(5)(4)~~ of this section or paragraph (h) of subsection ~~(5)(4)~~ of
8 this section, or if the fiduciary determines that possessing or exercising the power
9 will or may deprive the trust of a tax benefit or impose a tax burden not described in
10 subsection ~~(5)(4)~~ of this section. The release may be permanent or for a specified
11 period, including a period measured by the life of an individual. Such release shall
12 require approval of the District Court. Further, with approval of the District Court, a
13 fiduciary may divide a trust into one (1) or more fractional shares if the division
14 does not change the beneficial interests.

15 ~~(8)(7)~~ Terms of a trust or will that limit the power of a fiduciary to make an
16 adjustment between principal and income do not affect the application of this
17 section unless it is clear from the terms of the trust or will that the terms are
18 intended to deny the fiduciary the power of adjustment conferred by subsection (2)
19 or (3) of this section.

20 **(9) An aggrieved party may, no later than thirty (30) days from the date of the order**
21 **approving a power to adjust under subsection (2) or (3) of this section, institute**
22 **an adversary proceeding in Circuit Court pursuant to KRS 24A.120(2).**

23 ➔Section 7. KRS 386.480 is amended to read as follows:

24 (1) **As used** in this section:~~[-]~~

25 **(a)** "Payment" means a payment that a trustee may receive over a fixed number of
26 years or during the life of one (1) or more individuals because of services
27 rendered or property transferred to the payer in exchange for future payments.

The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer~~[-including a private or commercial annuity, an individual retirement account, and a pension, profit sharing, stock bonus, or stock ownership plan]~~. For purposes of subsections (4), (5), (6), and (7) of this section, the term also includes any payment from any separate fund, regardless of the reason for the payment; and

(b) "Separate fund" includes a private or commercial annuity, an individual retirement account, and a pension profit-sharing, stock-bonus, or stock-ownership plan.

(2) To the extent that a payment is characterized as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(3) If no part of a payment is characterized as interest, a dividend, or an equivalent payment and all or part of the payment is required to be made, a trustee shall allocate to income ten percent (10%) of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

(4) Except as otherwise provided in subsection (5) of this section, subsections (6) and (7) of this section shall apply, and subsections (2) and (3) of this section shall not apply, in determining the allocation of a payment made from a separate fund to:

(a) A trust to which an election to qualify for a marital deduction under 26

1 U.S.C. sec. 2056(b)(7) has been made; or

2 (b) A trust that qualifies for the marital deduction under 26 U.S.C. sec.
 3 2056(b)(5)[If, to obtain an estate tax marital deduction for a trust, a trustee
 4 shall allocate more of a payment to income than provided for by this section,
 5 the trustee shall allocate to income the additional amount necessary to obtain
 6 the marital deduction].

7 (5) Subsections (4), (6), and (7) of this section shall not apply if and to the extent that
 8 the series of payments would, without the application of subsection (4) of this
 9 section, qualify for the marital deduction under 26 U.S.C. sec. 2056(b)(7)(C).

10 (6) A trustee shall determine the internal income of each separate fund for the
 11 accounting period as if the separate fund were a trust subject to KRS 386.450 to
 12 386.504. Upon request of the surviving spouse, the trustee shall demand that the
 13 person administering the separate fund distribute the internal income to the trust.
 14 The trustee shall allocate a payment from the separate fund to income to the
 15 extent of the internal income of the separate fund and distribute that amount to
 16 the surviving spouse. The trustee shall allocate the balance of the payment to
 17 principal. Upon request of the surviving spouse, the trustee shall allocate
 18 principal to income to the extent the internal income of the separate fund exceeds
 19 payments made from the separate fund to the trust during the accounting period.

20 (7) If a trustee cannot determine the internal income of a separate fund but can
 21 determine the value of the separate fund, the internal income of the separate fund
 22 is deemed to equal three percent (3%) of the fund's value, according to the most
 23 recent statement of value preceding the beginning of the accounting period. If the
 24 trustee can determine neither the internal income of the separate fund nor the
 25 fund's value, the internal income of the fund is deemed to equal the product of
 26 the interest rate and the present value of the expected future payments, as
 27 determined under 26 U.S.C. sec. 7520, for the month preceding the accounting

1 period for which the computation is made.

2 ~~(8)(5)}~~ This section shall not apply to payments to which KRS 386.482 applies.

3 ➔Section 8. KRS 386.715 is amended to read as follows:

4 The trustee shall keep the beneficiaries of the trust reasonably informed of the trust and
5 its administration. In addition:

6 (1) Within thirty (30) days after his acceptance of the trust, the trustee shall inform in
7 writing the current beneficiaries and if possible, one (1) or more persons who may
8 represent beneficiaries with future interests, of the court in which the trust is
9 registered and of his name and address;[-]

10 (2) Upon reasonable request, the trustee shall provide the beneficiary with a copy of the
11 terms of the trust which describe or affect his interest and with relevant information
12 about the assets of the trust and the particulars relating to the administration;[-]

13 (3) Upon reasonable request, a beneficiary is entitled to a statement of the accounts of
14 the trust annually and on termination of the trust or change of the trustee; and

15 (4) While a trust is revocable by the settlor and, in the reasonable belief of the
16 trustee, the settlor has capacity to revoke the trust, the trustee's duties under this
17 section extend only to the settlor.

18 ➔Section 9. KRS 391.030 is amended to read as follows:

19 (1) Except as otherwise provided in this chapter, where any person dies intestate as to
20 his or her personal estate, or any part thereof, the surplus, after payment of funeral
21 expenses, charges of administration, and debts, shall pass and be distributed among
22 the same persons, and in the proportions, to whom and in which real estate is
23 directed to descend, except as follows:

24 (a) The personal estate of an infant shall be distributed as if he or she had died
25 after full age;

26 (b) An alien may be distributee as though he or she were a citizen; and

27 (c) Personal property or money on hand or in a bank or other depository to the

1 amount of fifteen thousand dollars (\$15,000) shall be exempt from
 2 distribution and sale and shall be set apart by the District Court having
 3 jurisdiction over the estate on application to the surviving spouse, or, if there
 4 is no surviving spouse, to the surviving children.

5 (2) The surviving spouse may, at any time before the property or money is set apart by
 6 the court, procure on petition from the Judge of the District Court having
 7 jurisdiction over~~[-administration of]~~ the estate, an order authorizing the surviving
 8 spouse to withdraw from any bank or other depository not exceeding two thousand
 9 five hundred dollars (\$2,500)~~[one thousand dollars (\$1,000)]~~ belonging to the
 10 estate~~[of the deceased]~~. Upon presentation of the order, the bank or depository shall
 11 permit the surviving spouse to withdraw the sum and shall lodge the order,
 12 endorsing thereon the amount withdrawn, with the circuit clerk who shall retain it in
 13 the clerk's~~[his or her]~~ files to be considered in connection with further proceedings
 14 in the estate and the withdrawal shall be treated as a charge against the property of
 15 the estate exempt from distribution.

16 (3) In the application for the setting apart of property or money under subsection (1) of
 17 this section, the surviving spouse or, if there is no surviving spouse, the surviving
 18 children may make their selection out of the personal property of the estate to the
 19 extent that the value of the property selected does not exceed the amount of fifteen
 20 thousand dollars (\$15,000).

21 (4) Where any person dies testate:

22 (a) Personal property or money on hand or in a bank or other depository to the
 23 amount of fifteen thousand dollars (\$15,000) shall be exempt from
 24 distribution and sale and shall be set apart by the District Court having
 25 jurisdiction over the estate on application of the surviving spouse;

26 (b) If there is no surviving spouse, personal property or money on hand or in a
 27 bank or other depository bequeathed to surviving children to the amount of

fifteen thousand dollars (\$15,000) shall be exempt from distribution and sale and shall be set apart by the District Court having jurisdiction over the estate on application by the surviving children;

(c) The exemption of the surviving spouse under paragraph (a) of this subsection is not conditioned upon the surviving spouse renouncing the will, and, in the event of renunciation, the surviving spouse shall be entitled to the exemption in addition and prior to determining the statutory share of the surviving spouse under KRS 392.080; and

(d) Subsection (3) of this section shall apply with respect to the surviving spouse provided that the surviving spouse shall first select from among the personal property of the residuary estate, then to the extent necessary from among the money on hand or on deposit specifically bequeathed under the will, and then to the extent necessary from among any other personal property specifically bequeathed under the will. Where the selection of the surviving spouse is made up, in whole or in part, from personal property or money on hand or on deposit specifically bequeathed to a beneficiary, such beneficiary shall have a right of contribution on the principles of KRS 394.420 to 394.490 unless the will otherwise directs, or it is necessarily to be inferred therefrom that the testator intended the same to fall on such beneficiary except that there shall be no right of contribution from the surviving spouse~~[The exemption provided in this section applies where the husband or wife dies testate].~~

➔ Section 10. KRS 392.080 is amended to read as follows:

- (1) (a) When a husband or wife dies testate, the surviving spouse may, though under full age, release what is given to him or her by will, if any, and receive his or her share under KRS 392.020 as if no will had been made, except that in such case the share in any real estate of which the decedent or anyone for the use of

the decedent was seized of an estate in fee simple at the time of death shall be only one-third (1/3) of such real estate. Such relinquishment shall be acknowledged before an officer authorized to administer oaths under the laws of this state and evidenced by the officer's certificate. The relinquishment and certificate shall be in substantially the following form:

I, _____, am the surviving spouse of _____. Except as provided in KRS 392.080(2), I hereby release what is given to me by the will of my said deceased spouse. I understand I will now receive the share to which I am entitled pursuant to KRS 392.080.

Surviving Spouse

THE STATE OF _____

COUNTY OF _____

Subscribed to and acknowledged before me by _____, the surviving spouse of _____, this _____ day of _____.

(Officer's signature and capacity)

(b) To be effective, such relinquishment and certificate shall be filed both with the clerk of the court which admitted the will of the deceased spouse to probate and the county clerk of the county where the will of the deceased spouse was admitted to probate, within six (6) months after the admission of the will to probate ~~made within six (6) months after the probate, and acknowledged before and left for record with the county clerk or his authorized deputy in the county where probate was made, or acknowledged before a subscribing witness and proved before and left with the county clerk or his authorized deputy. A copy of such relinquishment shall be filed with the clerk of the court in which probate was made].~~ If, within those six (6) months,

1 an action contesting the will is brought, the surviving spouse need not make
 2 such relinquishment until within six (6) months succeeding the time when the
 3 action is disposed of. Provided, however, the period for renunciation may be
 4 extended not exceeding six (6) additional months by order entered by the
 5 district court upon application of the surviving spouse for such extension
 6 within six (6) months after the date of probate~~[for such extension]~~.

- 7 (2) Subsection (1) does not preclude the surviving spouse from receiving his or her
 8 share under KRS 392.020, in addition to any bequest or devise to him or her by will,
 9 if such is the intention of the testator, plainly expressed in the will or necessarily
 10 inferable from the will.

11 ➔Section 11. KRS 286.3-219 is amended to read as follows:

- 12 (1) A corporate trustee administering a trust may continue the term of a portion of the
 13 trust so long as the period of the continuation does not extend beyond the term
 14 allowable under Sections 1, 2, and 3 of this Act~~[of the Rule Against Perpetuities,~~
 15 ~~as set forth in KRS 381.215,]~~ that is applicable to the trust.

- 16 (2) Subject to Sections 1, 2, and 3 of this Act~~[KRS 381.215]~~, the portion of the trust
 17 continued by the corporate trustee shall continue for the life of the remainder
 18 beneficiary of the trust, upon the same terms and conditions as provided in the trust,
 19 for the term preceding the life beneficiary's death. In addition, commencing with the
 20 death of the life beneficiary, the remainder beneficiary may withdraw that portion of
 21 the trust that has been continued by giving written notice to the corporate trustee.
 22 However, each year five percent (5%) of the remainder beneficiary's right of
 23 withdrawal shall lapse on December 31, and the lapses shall be cumulative.

- 24 (3) The corporate trustee's authority granted in subsection (1) of this section shall not
 25 apply to any portion of a trust which:

- 26 (a) Continues by its terms after the death of the life beneficiary; or
 27 (b) Has been pledged to secure a debt.

1 (4) This section shall apply to any trust that was irrevocable on January 1, 1976.

2 ➔Section 12. KRS 381.223 is amended to read as follows:

3 *To the extent they are not superseded by Sections 1, 2, and 3 of this Act, and* except as
 4 provided in KRS 381.221, KRS *381.218, 381.219, 381.221, 381.222, and*~~381.215 to~~
 5 381.223 shall apply only to inter vivos instruments and wills taking effect after July 1,
 6 1960, and to appointments made after July 1, 1960, including appointments by inter vivos
 7 instrument or will under powers created before July 1, 1960.

8 ➔Section 13. KRS 386.478 is amended to read as follows:

9 If a trustee determines that an allocation between principal and income required by KRS
 10 386.480, 386.482, 386.484, or 386.486 is unsubstantial, the trustee may allocate the entire
 11 amount to principal unless one (1) of the circumstances described in KRS 386.454~~(5)~~~~((4))~~
 12 applies to the allocation. This power may be exercised by a cotrustee in the circumstances
 13 described in KRS 386.454~~(5)~~~~((4))~~ and may be released for the reasons and in the manner
 14 described in KRS 386.454~~(7)~~~~((6))~~. An allocation is presumed to be insubstantial if:

15 (1) The amount of the allocation would increase or decrease net income in an
 16 accounting period, as determined before the allocation, by less than ten percent
 17 (10%); or

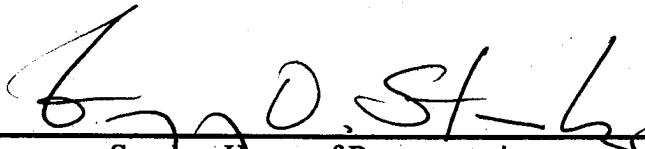
18 (2) The value of the asset producing the receipt for which the allocation would be made
 19 is less than ten percent (10%) of the total value of the trust's assets at the beginning
 20 of the accounting period.

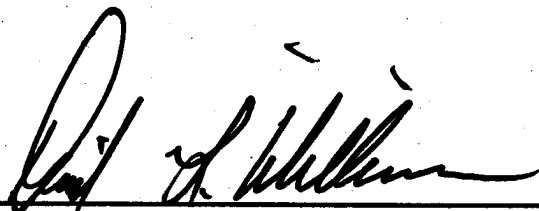
21 ➔Section 14. The following KRS sections are repealed:

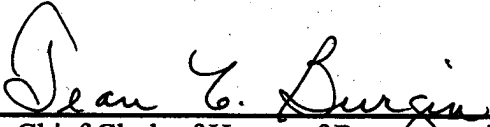
22 381.215 Adoption of common law rule against perpetuities.

23 381.216 Wait-and-see doctrine -- Reformation.

24 381.217 Exception in the case of pension trusts.


Speaker-House of Representatives


President of Senate

Attest: 
Chief Clerk of House of Representatives

Approved 
Governor

Date March 18, 2010